AMENDED IN ASSEMBLY MARCH 19, 2003

AMENDED IN ASSEMBLY MARCH 6, 2003

AMENDED IN ASSEMBLY JANUARY 22, 2003

CALIFORNIA LEGISLATURE—2003–04 REGULAR SESSION

ASSEMBLY BILL   No. 46

Introduced by Assembly Member Simitian

December 2, 2002

An act to add Section 1798.85.1 to the Civil Code, to amend Section 226 of the Labor Code, and to add Section 667.13 to, the Penal Code, relating to identity theft.

LEGISLATIVE COUNSEL'S DIGEST

AB 46, as amended, Simitian.   Identity theft.

Existing law prohibits any person or entity, not including a state or local agency, from using an individual's social security number in specified ways, including posting it publicly or requiring it for access to products or services. Existing law provides specified exceptions from the above provisions.

This bill would, in addition, prohibit any private or public university or college in California from using a student's social security number for identification in a manner that is available to the public or an unauthorized third party. The bill would permit the use of a student's social security number for identification for communication with a 3rd party who is authorized by the student to receive it. Each university or college would be authorized to develop a system of personal identifiers for students to be used for grading and other administrative purposes, however the personal identifiers could not be social security numbers.

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The bill would also prohibit an employer from requiring an employee to use his or her social security number in a manner that is available to the public or an unauthorized 3rd party.

Existing law requires that every employer, semimonthly or at the time of each payment of wages, furnish each of his or her employees, either as a detachable part of the check, draft, or voucher paying the employee's wages, or separately when wages are paid by personal check or cash, an itemized statement in writing showing, among other things, the name of the employee and his or her social security number.

This bill would remove the requirement that the statement show the employee's social security number and would instead require the employer to show the employee's personal identification number if the employer has established an employee identification number system that uses a personal identifier other than the employee's social security number.

Existing law makes every person who willfully obtains personal identifying information of another person, and uses that information for any unlawful purpose, guilty of a misdemeanor or a felony.

Existing law makes it a crime to falsely personate a person so as to do any an act that would render the person impersonated liable for a suit or prosecution.

The bill would create a one-year enhancement for any person who ~~commits~~ *is convicted of a felony for committing* false personation in those circumstances~~,~~ or ~~who~~ unlawfully ~~uses~~ *using* personal identifying information, against a person who is under 18 years of age at the time the crime was committed and the victim's age is known or reasonably should have been known to the person committing the crime. Because this bill would create a new enhancement, it would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: yes.

The people of the State of California do enact as follows:

1   SECTION 1.   Section 1798.85.1 is added to the Civil Code, to
2   read:
3   1798.85.1.   In addition to Section 1798.85, the following
4   restrictions on the use of social security numbers shall apply:
5   (a) (1) A public or private university or college in California
6   may not use a student's social security number for identification
7   in a manner that is available to the public or an unauthorized third
8   party.
9   (2) A public or private university or college in California may
10 use a student's social security number for identification for
11 communication with a third party who is authorized by the student
12 to receive it.
13   (3) Each university or college may develop a system of
14 personal identifiers for students to be used for grading and other
15 administrative purposes. The personal identifiers shall not be
16 social security numbers.
17   (b) An employer may not require an employee to use his or her
18 social security number in a manner that is available to the public
19 or an unauthorized third party.
20   SEC. 2.   Section 226 of the Labor Code is amended to read:
21   226.   (a) Every employer shall, semimonthly or at the time of
22 each payment of wages, furnish each of his or her employees,
23 either as a detachable part of the check, draft, or voucher paying
24 the employee's wages, or separately when wages are paid by
25 personal check or cash, an itemized statement in writing showing
26 (1) gross wages earned, (2) total hours worked by the employee,
27 except for any employee whose compensation is solely based on
28 a salary and who is exempt from payment of overtime under
29 subdivision (a) of Section 515 or any applicable order of the
30 Industrial Welfare Commission, (3) the number of piece-rate units
31 earned and any applicable piece rate if the employee is paid on a
32 piece-rate basis, (4) all deductions, provided, that all deductions
33 made on written orders of the employee may be aggregated and
34 shown as one item, (5) net wages earned, (6) the inclusive dates of
35 the period for which the employee is paid, (7) the name of the
36 employee and his or her personal identification number if the
37 employer has established an employee identification number
38 system that uses a personal identifier other than the employee's

1 social security number, (8) the name and address of the legal entity
2 that is the employer, and (9) all applicable hourly rates in effect
3 during the pay period and the corresponding number of hours
4 worked at each hourly rate by the employee. The deductions made
5 from payments of wages shall be recorded in ink or other indelible
6 form, properly dated, showing the month, day, and year, and a
7 copy of the statement or a record of the deductions shall be kept
8 on file by the employer for at least three years at the place of
9 employment or at a central location within the State of California.
10   (b) An employer that is required by this code or any regulation
11 adopted pursuant to this code to keep the information required by
12 subdivision (a) shall afford current and former employees the right
13 to inspect or copy the records pertaining to that current or former
14 employee, upon reasonable request to the employer. The employer
15 may take reasonable steps to assure the identity of a current or
16 former employee. If the employer provides copies of the records,
17 the actual cost of reproduction may be charged to the current or
18 former employee.
19   (c) An employer who receives a written or oral request to
20 inspect or copy records pursuant to subdivision (b) pertaining to
21 a current or former employee shall comply with the request as soon
22 as practicable, but no later than 21 calendar days from the date of
23 the request. A violation of this subdivision is an infraction.
24 Impossibility of performance, not caused by or a result of a
25 violation of law, shall be an affirmative defense for an employer
26 in any action alleging a violation of this subdivision. An employer
27 may designate the person to whom a request under this subdivision
28 will be made.
29   (d) This section does not apply to any employer of any person
30 employed by the owner or occupant of a residential dwelling
31 whose duties are incidental to the ownership, maintenance, or use
32 of the dwelling, including the care and supervision of children, or
33 whose duties are personal and not in the course of the trade,
34 business, profession, or occupation of the owner or occupant.
35   (e) An employee suffering injury as a result of a knowing and
36 intentional failure by an employer to comply with subdivision (a)
37 is entitled to recover the greater of all actual damages or fifty
38 dollars ($50) for the initial pay period in which a violation occurs
39 and one hundred dollars ($100) per employee for each violation in
40 a subsequent pay period, not exceeding an aggregate penalty of

1 four thousand dollars ($4,000), and is entitled to an award of costs
2 and reasonable attorney's fees.
3   (f) A failure by an employer to permit a current or former
4 employee to inspect or copy records within the time set forth in
5 subdivision (c) entitles the current or former employee or the
6 Labor Commissioner to recover a seven hundred fifty dollar
7 ($750) penalty from the employer.
8   (g) An employee may also bring an action for injunctive relief
9 to ensure compliance with this section, and is entitled to an award
10 of costs and reasonable attorney's fees.
11   (h) This section does not apply to the state, or any city, county,
12 city and county, district, or any other governmental entity.
13   SEC. 3.   Section 667.13 is added to the Penal Code, to read:
14   667.13.   Any person who ~~commits~~ *is convicted of a felony for*
15 *the commission of* false personation as defined in paragraph (3) of
16 Section 529 or identity theft as defined in Section 530.5 against a
17 person who is under 18 years of age and the victim's age is known
18 or reasonably should have been known to the person committing
19 the crime, shall receive a one-year enhancement.
20   SEC. 4.   No reimbursement is required by this act pursuant to
21 Section 6 of Article XIII B of the California Constitution because
22 the only costs that may be incurred by a local agency or school
23 district will be incurred because this act creates a new crime or
24 infraction, eliminates a crime or infraction, or changes the penalty
25 for a crime or infraction, within the meaning of Section 17556 of
26 the Government Code, or changes the definition of a crime within
27 the meaning of Section 6 of Article XIII B of the California
28 Constitution.

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